

**R590. Insurance, Administration.**

**R590-171. Surplus Lines Procedures Rule.**

**R590-171-1. Authority.**

This rule is promulgated pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111.

**R590-171-2. Purpose and Scope.**

A. The purpose of this rule is:

(1) to recognize The Surplus Line Association of Utah as the advisory organization of surplus lines producers;

(2) to authorize The Surplus Line Association to conduct the examination of surplus lines transactions;

(3) to authorize The Surplus Line Association to collect a stamping fee;

(4) to require that each person licensed as a surplus lines producer in Utah be a member of the advisory organization;

(5) to regulate access to the surplus lines market, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge; and

(6) to prescribe procedures for the placement of insurance with surplus lines insurers.

B. This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah.

**R590-171-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:

A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.

B. (a) "Exempt Commercial Purchaser" means any person purchasing commercial insurance from the surplus lines market that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of \$20,000,000 as such amount is adjusted pursuant to Subsection (b);

(B) The person generates annual revenues in excess of \$50,000,000 as such amount is adjusted pursuant to Subsection (b);

(C) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

(D) The person is a not-for-profit organization or public entity

generating annual budgeted expenditures of at least \$30,000,000 as such amount is adjusted pursuant to Subsection (b); or

(E) The person is a municipality with a population in excess of 50,000 persons.

(b) Effective on January 1, 2018, and each fifth January occurring thereafter, the amounts in R590-171-3.B (a) (iii) (A), (B), and (C) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, 15 U.S.C. § 8206(5).

~~[B]~~C. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-88.

~~[E]~~D. "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2) (a) (viii) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.

~~[D]~~E. "Surplus lines insurer" means a nonadmitted insurer that may place business, pursuant to Title 31A, Chapter 15, Part 1 and this rule, with a surplus lines producer.

~~[E]~~F. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

#### **R590-171-4. Surplus Line Association of Utah.**

A. Surplus Line Association of Utah is recognized as the advisory organization of surplus lines producers authorized by Section 31A-15-111.

B. Each person licensed as a surplus lines producer in Utah must be a member of the Surplus Line Association of Utah.

C. The Surplus Line Association of Utah is authorized:

(1) to facilitate and encourage compliance by its members with the laws of Utah and the rules of the commissioner relative to surplus lines insurance and to act in other matters as specified by Section 31A-15-111;

(2) to conduct the examination of surplus lines transactions required under Subsection 31A-15-103(11);

(3) to make a determination that a surplus lines transaction is in compliance with Subsection 31A-15-103(11) and with Sections R590-171-6 and 7 of this rule; and

(4) to collect the stamping fee prescribed by Subsection 31A-15-103(11) (d) .

#### **R590-171-5. Export List.**

A. (1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with surplus lines insurers.

(2) The commissioner may consider the following in determining the insurance coverages and classes to be listed:

(a) the current marketplace;

(b) information from the Surplus Line Association Board of Directors;

(c) information from admitted and surplus lines insurers doing

business in Utah;

(d) information from other sources, including producers and consumers; and

(e) any other information the commissioner deems relevant.

(3) Any person may request in writing that, at the next publication of the list, the commissioner add or remove a coverage or class of insurance from the list. The person must provide evidence of market conditions to substantiate the request.

B. The list shall be published at least annually but may be revised and republished at any time.

**R590-171-6. Conditions for Placing Insurance with Surplus Lines Insurers.**

Placement of insurance with surplus lines insurers pursuant to Section 31A-15-103 may only be done in accordance with either Section A, B or C below.

A. Insurance coverages and classes included on the export list may be placed with surplus lines insurers.

B. Insurance coverages and classes not included on the export list may be placed with surplus lines insurers only under the following conditions:

(1) A good faith effort must be made to place the insurance with admitted insurers the producer has reason to believe will consider writing the type of coverage or class of insurance involved. If that effort shows that the insurance cannot be obtained because of underwriting reasons or the insured requires specific terms and conditions of coverage which are unavailable through admitted insurers, the insurance may be placed with surplus lines insurers.

Placement with the surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive as defined in Subsection 31A-19a-201(2).

(2) The inability to place the insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer.

(3) The producer must document his efforts to place the insurance with admitted insurers. The documentation must include the record of the efforts to place the insurance and a written explanation confirming the effort as being in good faith. The good faith effort documentation shall be maintained in the surplus lines producer's and the originating producer's files for at least three years from the inception date of coverage or renewal.

~~[— C. Substantial insureds may purchase insurance from surplus lines insurers pursuant to Section 31A-15-103 if each of the following conditions is met:~~

~~— (1) the insured procures the insurance for its risk exposures by use of an employee of the insured whose full time responsibilities and duties consist of purchasing insurance and risk management;~~

~~— (2) the insurance procured for property and casualty coverages, excluding workers' compensation insurance, exceeds an annual aggregate premium of \$500,000; and~~

~~— (3) the insured's risk manager and an officer of the company~~

~~sign an affidavit confirming items (1) and (2). This affidavit shall be retained by the surplus lines producer and one copy shall be attached to the submission documentation required under R590-171-8.]~~

C. An exempt commercial purchaser, that, at the time of placement, meets the requirements as defined in R590-171-3(B), may purchase commercial insurance from the surplus market.

D. All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.

**R590-171-7. Conditions for Marketing Insurance with Surplus Lines Insurers.**

A. Producers may not solicit business on behalf of a surplus lines insurer. However:

(1) Producers may advertise the availability of insurance products for the insurance coverages and classes included on the export list to potential insureds and other producers.

(2) Surplus lines producers may advertise their services and product lines to other producers.

(3) Such advertisements shall identify the fact that the insurance will be placed with a surplus lines insurer. The advertisements must not identify the insurer by name nor act as a solicitation on behalf of any surplus lines insurer. The advertisements shall not identify specific rates or specific policy provisions.

B. Once negotiations over the available terms and conditions for specific coverages begin, at least the following facts must be disclosed in writing to the potential insured:

(1) that the insurance will be placed through a surplus lines insurer and the name of the insurer;

(2) that the producer is not a producer of the potential insurer because surplus lines insurers are not permitted to appoint producers;

(3) that the surplus lines market is a specialty market that has limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

(4) that no protection is afforded under any Utah guaranty fund mechanism.

C. Subject to the general provisions of Section 31A-23a-501, a surplus lines producer may originate surplus lines insurance or accept applications for surplus lines insurance from any other producer duly licensed as to the kinds of insurance involved. The surplus lines producer may compensate the originating producer involved in the transaction.

D. Only that portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer. If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer.

An explanation must be provided in the submission documentation outlined in R590-171-8.

**R590-171-8. Reporting and Examination.**

A. No later than 60 days after the effective date of a policy or a certificate of insurance that has been placed with a surplus lines insurer, the surplus lines producer must file a complete copy of the policy or certificate and justification for placement with a surplus lines insurer with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a).

B. Justification for placement with a surplus lines insurer shall:

(1) for insurance exposures placed pursuant to R590-171-6.A, consist of identification of the specific coverage or class on the export list; or

(2) for insurance exposures placed pursuant to R590-171-6.B, consist of a copy of the record of the effort to place with admitted insurers required by R590-171-6.B(3); or

(3) for insurance placed pursuant to R590-171-6.C, consist of a copy of an affidavit signed by the insured; and

(4) if applicable, consist of the explanation required by R590-171-7.D; and

(5) consist of any other information or documentation pertinent to the surplus lines placement.

C. The Surplus Line Association shall provide submission forms to be used for complying with R590-171-8.B.

D. If the contract or certificate is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by R590-171-8B must be filed with the Surplus Lines Association of Utah.

E. If the examination performed by the Surplus Line Association determines that the placement of a policy or certificate of insurance with a surplus lines insurer is not in compliance with Section 31A-15-103(11)(a) or this rule, the Surplus Line Association shall take such corrective action as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.

**R590-171-9. Rule Distribution.**

The Surplus Line Association of Utah shall distribute a copy of this rule to every surplus lines producer and instruct all surplus lines producers as to its scope and operation.

**R590-171-10. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

~~**R590-171-11. Enforcement Date.**~~

~~The commissioner will begin enforcing the revised provisions of this rule upon the effective date of this rule.]~~

**R590-171-1211. Severability.**

If a provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect

any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment:** [~~September 28, 2009~~]2012

**Notice of Continuation:** May 27, 2010

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-15-103; 31A-15-111